

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 VICTOR TAGLE,

Case No. 2:18-cv-02049-GMN-CWH

4 Plaintiff,

ORDER

5 v.

6 STATE OF NEVADA et al.,

7 Defendants.

8 **I. DISCUSSION**

9 Plaintiff, a prisoner in the custody of the Nevada Department of Corrections
 10 (“NDOC”), is being housed at a private prison in Arizona. Plaintiff, *pro se*, has submitted
 11 a document entitled “tort *Bivens* action,” an application to proceed *in forma pauperis*¹, and
 12 a motion for return of original envelopes. (ECF Nos. 1-1, 7). However, on at least three
 13 (3) occasions, the Court has dismissed civil actions commenced by Plaintiff while in
 14 detention as malicious or for failure to state a claim upon which any relief may be granted.²

15 Pursuant to 28 U.S.C. § 1915(g), “if [a] prisoner has, on 3 or more prior occasions,
 16 while incarcerated or detained in any facility, brought an action or appeal in a court of the
 17 United States that was dismissed on the grounds that it is frivolous, malicious, or fails to
 18 state a claim upon which relief may be granted,” he may not proceed *in forma pauperis*
 19 and, instead, must pay the full \$400.00 filing fee in advance unless he is “under imminent
 20 danger of serious physical injury.” 28 U.S.C. § 1915(g).

21 In his “tort *Bivens* action,” Plaintiff sues various Nevada Department of Corrections
 22 (“NDOC”) employees and deputy attorney generals for various actions that took place

23
 24 ¹ Plaintiff’s application to proceed *in forma pauperis* is located at ECF No. 1-1 at 32-34.

25 ² See *Tagle v. State of Nevada et al.*, 2:15-cv-02083-RCJ-GWF (dismissed for failure to
 26 state a claim); *Tagle v. State of Nevada et al.*, 2:15-cv-02358-MMD-PAL (dismissed for
 27 maliciousness and failure to state a claim); and *Tagle v. State of Nevada et al.*, 2:16-cv-
 28 00852-JAD-VCF (dismissed for maliciousness and failure to state a claim). The Ninth
 Circuit Court of Appeals has affirmed Plaintiff’s three-strikes status. See *Tagle v. Core
 Civic America et al.*, 2:18-cv-00544-JAD-NJK at ECF No. 31. The Court takes judicial
 notice of its prior records in the above matters.

1 while Plaintiff was incarcerated in Nevada. (See generally ECF No. 1-1). However, after
2 reviewing these allegations, the Court finds that the allegations fail to plausibly allege that
3 Plaintiff is in imminent danger of serious physical injury. See *Andrews v. Cervantes*, 493
4 F.3d 1047, 1055 (9th Cir. 2007) (holding that the exception to § 1915(g) applies if the
5 complaint makes a plausible allegation that the prisoner faced imminent danger of serious
6 physical injury at the time of filing). As such, Plaintiff must pre-pay the \$400.00 filing fee
7 in full.

The Court also denies Plaintiff's motion for the Clerk's Office to return the original envelopes that he mailed his pleadings in back to him. (ECF No. 7).

II. CONCLUSION

For the foregoing reasons, it is ordered that Plaintiff's application to proceed *in forma pauperis* (ECF No. 1-1 at 32-34) is denied.

It is further ordered that this action will be dismissed without prejudice unless Plaintiff pays the \$400.00 filing fee in full within thirty (30) days from the date of this order.

It is further ordered that the Clerk of the Court shall send Plaintiff two copies of this order. Plaintiff shall make the necessary arrangements to have one copy of this order attached to the check paying the filing fee.

It is further ordered that the Clerk of the Court shall retain the “tort *Bivens* action” (ECF No. 1-1) but shall not file the document until the matter of the filing fee is resolved.

It is further ordered that the motion for return of original envelopes (ECF No. 7) is denied.

DATED THIS 21 day of December 2018.

Gloria M. Navarro, Chief Judge
United States District Court